United Nations S/2002/1184

Security Council

Distr.: General
21 October 2002

Original: English

Letter dated 18 October 2002 from the Chairman of the Security Council Committee established pursuant to resolution 1373 (2001) concerning counter-terrorism addressed to the President of the Security Council

I write with reference to my letter of 6 August 2002 (S/2002/902).

The Counter-Terrorism Committee has received the attached supplementary report from Panama, submitted, pursuant to paragraph 6 of resolution 1373 (2001) (see annex).

I would be grateful if you could arrange for the present letter and its annex to be circulated as a document of the Security Council.

(*Signed*) Jeremy **Greenstock**
Chairman
Security Council Committee established pursuant to
resolution 1373 (2001) concerning counter-terrorism

02-65779 (E) 051102 121102

BEST COPY AVAILABLE

Annex

[Original: Spanish]

Letter dated 14 October 2002 from the Permanent Representative of Panama to the United Nations addressed to the Chairman of the Security Council Committee established pursuant to resolution 1373 (2001) concerning counter-terrorism

In reply to your note of 15 July 2002, I have the honour to transmit to you herewith the expanded report of the Government of Panama on measures to combat terrorism and the financing of terrorist activities (see appendix) pursuant to Security Council resolution 1373 (2001).

(*Signed*) Ramón A. **Morales Quijano**
Ambassador
Permanent Representative

Appendix

Republic of Panama: expanded report on measures to combat terrorism and the financing of terrorist activities, pursuant to Security Council resolution 1373 (2001)

Panama, 27 September 2002

The Government of the Republic of Panama has the honour to submit to the United Nations Security Council its second report on the provisions in place and the steps taken to introduce new measures to combat international terrorism.

In reply to Note S/AC.40/2002/MS/OC.120 of 15 July 2002 from the Counter-Terrorism Committee, the Government of the Republic of Panama submits the following new information as requested.

- **Subparagraph 1 (a)**

• Please provide a summary of the provisions of Decree No. 1 of 3 January 2001.

Executive Decree No. 1 of 3 January 2001, regulating Act No. 42 of 2 October 2000, specifies which public institutions shall be considered monitoring and oversight bodies of the reporting institutions regulated by Act No. 42 of 2000, establishing measures for preventing the offence of money-laundering, and the obligations of the monitoring and oversight bodies in the prevention of this offence.

The monitoring and oversight bodies of the reporting institutions are as follows:

- The Superintendency of Banks, for banks and trust companies.
- The Directorate-General of Commerce of the Ministry of Commerce and Industry, through the corresponding directorates, for exchange, remittance and financial houses and real-estate promotion and brokerage firms.
- The Panamanian Autonomous Cooperative Institute (IPACOOP) for Savings and Loans Cooperatives.
- The National Securities Commission, for stock exchanges and stockbrokers and investment managers.
- The Colón Free Zone Administration, for firms established in the Colón Free Zone.
- The National Beneficiary Lottery.
- The Gaming Control Board of the Ministry of Economy and Finance, for casinos and other establishments devoted to betting and games of chance.
- The Superintendency of Insurance and Reinsurance of the Ministry of Commerce and Industry, for insurance and reinsurance companies and reinsurance brokers.

The oversight and monitoring bodies, pursuant to this Decree, must conduct periodic inspections at the reporting institutions, for the purpose of verifying that they keep a record of clients' names, addresses and identity numbers.

Similarly, the aforementioned Decree establishes fines for reporting institutions that do not comply with the established provisions.

Likewise, Executive Decree No. 1 of 2001 regulates matters relating to Declarations of Cash and Quasi-Cash for transactions of over 10,000 balboas, in addition to the procedure to be followed by reporting institutions for transmitting them to the Financial Analysis Unit.

This shows clearly that Executive Decree No. 1 of 2001 is intended to prevent money-laundering as defined in article 389 of the Penal Code, which characterizes it as an activity that stems from a series of underlying crimes, including acts of terrorism.

• Subparagraph 1 (b)

• The report states that "Article No. 41 of 3 October 2000 added a section to the Penal Code characterizing money-laundering for terrorist activities as an underlying crime" and that "Act No. 42 of the same date extended its scope to money-laundering to fund terrorism". However:

• Article 389 of Act No. 41, quoted in the report, appears to deal only with the proceeds of illegal activity (including terrorist acts) and not with the direction of funds and other resources, regardless of origin, to terrorist purposes; and

• Article 1, paragraph 3, of Act No. 42 likewise appears to be limited in its operation to "money derived from illicit activities".

Both Act No. 1 of 2 October 2000, which adds to the Penal Code section VI, entitled "Money-laundering", and Act No. 42 of 2 October 2000, which establishes measures for the prevention of money-laundering, cover money-laundering. In this connection, the Committee's interpretation is in line with the current content of the legal provisions currently included in those laws.

The Republic of Panama has already ratified the United Nations Convention for the Suppression of the Financing of Terrorism by Act No. 22 of 9 May 2002, on which the pertinent legal amendments will be based.

• Do other provisions of those Acts deal with the financing of terrorist activities from legitimately obtained resources? If not, is that question being addressed in the bill to add new Title VII to the Penal Code or is there any other legislative proposal to do so?

There is at present no separate title in the Penal Code covering the financing of terrorist activities from legitimately obtained resources. With the ratification of the United Nations Convention for the Suppression of the Financing of Terrorism, work is under way on a new bill to be submitted to the Legislative Assembly. The preliminary bill mentioned in our first report, "adding to Title VII of the Penal Code a new section, under collective security offences, entitled 'Offences of Terrorism and Possession, Trafficking and Stockpiling of Arms, Ammunition or Explosives'", did not regulate the financing of terrorism.

Hence, there is no other legal instrument specifically regulating the financing of terrorism. However, the Penal Code contains provisions that indirectly sanction

that illicit activity, including article 242 concerning unlawful association and article 311 on offences against the international community (see annex 1).

• **Subparagraph 1 (c)**

• The CTC notes that, while Panama has no legislation specifically dealing with the freezing of assets used or intended for the financing of terrorism, "it is in the process of ratifying the International Convention for the Suppression of the Financing of Terrorism" and that international conventions to which Panama is party "are binding and require strict compliance, as stipulated in article 4 of the National Constitution." Please indicate how the obligations binding on States in that Convention are made effective in Panama as obligations directly binding persons and entities, including foreign persons and entities.

The Republic of Panama has already ratified, by Act No. 22 of 9 May 2002, the United Nations Convention for the Suppression of the Financing of Terrorism. In that connection, it should be borne in mind that article 4 of the Panamanian Constitution states: "The Republic of Panama abides by the rules of international law". This means that Panama recognizes as binding any obligations acquired by it as a subject of international law. However, it should be pointed out that the performance of those obligations should not conflict with other principles also established in the Constitution. Accordingly, the principle of legality requires that the necessary legislative adjustments be made to the existing penal system with a view to incorporating the financing of terrorism as an autonomous offence as well as in connection with money-laundering. Until that offence is characterized, no penalty may be imposed, since the principle of legality (*nullum crimen sine previa lege*) also forms an integral part of our existing constitutional order.

Article 31. Acts shall be penalized only if they are punishable under a law that was in existence before they were committed and that applies specifically to the act in question.

We consider that amendment of Acts Nos. 41 and 42 of 2000 and of Executive Decree No. 1 of 2001 concerning the prevention of money-laundering will provide a legal basis for the prevention of the financing of terrorism. Thus, as stated above, once the United Nations Convention for the Suppression of the Financing of Terrorism was ratified, work began on the preparation of a new preliminary bill to be submitted to the Legislative Assembly.

• Are financial institutions, other intermediaries (e.g. lawyers) and other natural or legal persons required to report suspicious transactions to the relevant authorities? What penalties apply to those who omit to report?

The financial institutions listed in Act No. 42 of 2000 (banks, trust companies, exchange and remittance offices and natural and legal persons conducting currency exchange or remittance activities, whether or not as their main activity, finance companies, savings and loans cooperatives, stock exchanges, stock markets, securities firms, stockbrokers and investment managers) are the only persons obliged to report suspected money-laundering activities to the Financial Analysis Unit.

There are norms that criminalize unauthorized divulgence of privileged information by professionals (intermediaries, including lawyers) which damages

their clients (article 170 of the Penal Code), and ethical norms that oblige legal professionals to keep clients' affairs confidential. That being said, other provisions also establish the obligation of all persons to report the commission of an offence (article 1995 of the Judicial Code). In the particular case of lawyers and other intermediaries, to whom the question refers, the purpose of the legal provision cited is to punish concealment of the offence.

Article 1995 of the Judicial Code states:

"*Article 1995*: A person who, by any means, learns of the commission of an offence prosecutable ex officio has the obligation to report it to the nearest investigation official and, if the perpetrator is caught in the act, to the police station or officer nearest to the place of the crime. In such a situation, the official shall take immediate steps to bring the detainee, should there be one, before the competent examining official."

Executive Decree No. 468 of 19 September 1994, establishes in article 3 that information provided by a lawyer concerning unlawful activities, specifically crimes of drug trafficking and money-laundering, shall be deemed neither a violation of professional secrecy towards the client nor a breach of professional ethics, for the purposes of article 170 of the Penal Code, since such offences involve the higher interest of the State.

Executive Decree No. 468 provides, inter alia:

"*Article 1*: Any lawyer or law firm acting as resident agent of a Panamanian public corporation is required to be acquainted with the client and possess sufficient information to identify the client to the competent authorities if the need arises."

"*Article 2*: Such information shall be provided only at the request of an official of the Office of the Public Prosecutor, the judicial body with competence to hear cases pertaining to drug trafficking or the laundering of money derived from that criminal activity, for use in trials already in progress in the Republic of Panama, or under mutual legal assistance treaties."

"*Article 3*: Provision of the information referred to in the preceding article by the resident agent shall be deemed neither a violation of the lawyer's professional secrecy towards the client nor a breach of professional ethics, for the purposes of article 170 of the Penal Code, since it involves the higher interest of the State."

Article 170 of the Penal Code establishes the following:

"*Article 170*: Any person who, by virtue of his office, employment, profession or expertise, discovers secrets the publication of which may be harmful and discloses them without the consent of the person concerned, or if the disclosure was not vital for protecting a higher interest, shall be sentenced to imprisonment for ten months to two years or a fine of 30 to 150 days, or debarred from performing that office, employment, profession or expertise for up to two years. This penalty shall be doubled when the person breaching secrecy is a public servant who gained access to the information through one of the measures established by law for preventing the crime of money-laundering."

In that connection, Act No. 41 of 2 October 2000 adds Chapter VI entitled "Money-laundering" to Title XII of the Penal Code, and establishes penalties for persons who are under an obligation to report suspicious transactions but fail to do so. Articles 389 and 390 provide as follows:

> "*Article 389*: Anyone who receives, deposits, trades in, converts or transfers money, securities, property or other financial resources, in the full knowledge that they are derived from activities related to drug trafficking, fraud, illicit arms trafficking, trafficking in persons, kidnapping, extortion, embezzlement, corruption of public servants, terrorist acts, theft or international trafficking in vehicles, as provided for under Panamanian criminal law, with the aim of hiding or concealing their illicit origin or assisting in evading the legal consequences of such punishable acts shall be sentenced to 5 to 12 years' imprisonment and a fine of 100 to 200 days."
>
> "*Article 390*: The penalty described in the preceding article shall also be imposed on:
>
> 1. Anyone who knowingly hides or conceals the true nature, origin, location, destination or ownership of, or assists in facilitating profit from, money, securities, property or other financial resources when they are derived or have been obtained directly or indirectly from any of the illicit activities set forth in article 389 of this Code.
>
> 2. Anyone who knowingly conducts transactions, personally or through another natural or legal person, in a banking, financial, commercial or any other type of establishment in money, securities, property or other financial resources that are derived from any of the illicit activities set forth in article 389 of this Code.
>
> 3. Anyone who personally or through an intermediary knowingly provides a banking, financial commercial or any type of establishment with false information for the opening of accounts or conducts transactions involving money, securities, assets or other financial resources that are derived or obtained from any of the illicit activities listed in article 389 of the Code."

- **Subparagraph 1 (d)**

- **What laws and practical controls and surveillance measures exist to ensure that funds and other economic resources collected for religious, charitable or cultural purposes are not diverted for other purposes, particularly for financing terrorism?**

The laws, practical controls and surveillance measures that exist to ensure that funds and other economic resources collected for religious, charitable or cultural purposes are not diverted for other purposes are essentially contained in the country's laws on money-laundering.

Funds and economic resources for religious, charitable or cultural purposes may be lawfully collected only by legal persons with a ministerial authorization from the Ministry of the Interior and Justice. The requirements that must be met by civil, cultural, religious and charitable associations in order to be recognized as legal persons are set forth in our legislation. They include:

1. Power of attorney and application through an authorized lawyer on official paper in accordance with the specifications given in Act No. 56 of 25 July 1996. The application must state the legal basis of the association.

2. Certificate of formation, countersigned by the chairperson and secretary.

3. Act approving the statute, signed by the chairperson and secretary.

4. List of members of the Board, which must number at least five (5), accompanied by their identity numbers and signatures. The members of the Board must be Panamanian, except for Embassy officials and diplomatic personnel.

5. Statute duly signed by the chairperson and secretary.

6. Plan of work for the first five years.

7. All documents must be submitted in the original and two copies.

This makes it possible to monitor the persons participating legally in such activities, who at one time or another engage in activities on behalf of the association. Once the ministerial authorization has been obtained, it must be notarized and placed on record in the Public Registry of Panama. The representatives of the juridical person may then open a bank account, subject to legal controls and procedures, using the public document as proof of registration.

In addition to the registration and analysis of all transactions involving more than 10,000 balboas, transactions which, while not exceeding that amount, show a pattern over time, are also monitored. This analysis is conducted by the Financial Analysis Unit.

Similarly, there are other statutory provisions promulgated by the monitoring oversight bodies for the prevention of money-laundering, such as the Superintendency of Banks in Panama, the National Securities Commission and the Panamanian Autonomous Cooperative Institute (IPACOOP).

• Please indicate the laws and procedures available to regulate alternative remittance systems of, or similar to, the kind known as hawala.

Regarding the procedures available to regulate alternative remittance systems, banks are required, under Agreement 9-2000 of the Superintendency of Banks, to identify the original remitter of the cash transfer. Where cash remittance houses are concerned, the Ministry of Commerce and Industry prepared a preliminary bill regulating exchange and remittance houses, which will shortly be submitted to the Legislative Assembly for debate.

Lastly, alternative remittance systems similar to the kind known as hawala are not regulated in our country at present. The banking system, like all related services, is easily accessible to the majority of the population, which suggests that hawala is not generally practised.

In that connection, the Republic of Panama would be grateful for any assistance the Committee can render it regarding possible procedures for regulating and, in particular, detecting alternative remittance systems of this kind, such as hawala.

• **Subparagraph 2 (a)**

• **The CTC would welcome a detailed outline and a progress report on the enactment and implementation of the bill adding Title VII (Offences of Terrorism and Possession, Trafficking and Stockpiling of Arms, Ammunition or Explosives) to the Penal Code.**

The above-mentioned preliminary bill adding Title VII (Offences of Terrorism and Possession, Trafficking and Stockpiling of Arms, Ammunition or Explosives) to the Penal Code was withdrawn following the debate on its first reading in the Legislative Assembly, so that new concepts could be incorporated, such as the financing of terrorism, an offence not envisaged in the preliminary bill, since the United Nations Convention for the Suppression of the Financing of Terrorism had not yet been ratified.

The Republic of Panama awaits with interest the establishment of a standard definition of terrorism, and would be grateful if the Committee would make suggestions for the fullest possible incorporation of that concept and other related crimes in our criminal legislation.

• **It appears from the report that:**

• **Article 311 of the Penal Code applies only where the target of attack is "a specific group of human beings" and not where violence is indiscriminate; and**

• **Article 312 applies only where an incident is one "exposing Panama to the risk of war or the breaking-off of international relations".**

The Committee has correctly interpreted article 311 as applying not to indiscriminate violence, but to genocide. Indiscriminate violence will be considered to be one of the defining elements of the crime of terrorism. Regarding article 312, there is currently no autonomous penal provision punishing the recruitment of members of terrorist groups.

• **Please provide particulars of any proposal, either in the above-mentioned bill or by other means, to extend the application of those articles to more closely meet the requirements of subparagraph 2 (a) of the resolution.**

As indicated in the reply to question 8, the preliminary bill was withdrawn from the Assembly. It did not envisage the expansion of those articles. However, the Committee's remark that article 311 does not apply to indiscriminate violence, such as terrorism, and that article 312 applies only when an incident exposes Panama to risk, convinces us of the need for a new regulation that embraces the crime of terrorism; by merely expanding that article we would be mixing genocide, covered in article 311, with acts of terrorism, which require a new category of offence.

The Committee has rightly interpreted article 312, which needs to be expanded to cover the recruitment of persons and other activities contemplated in that article for the purpose of engaging in acts of terrorism or any other crimes against humanity.

• Please outline the existing measures, both legislative and practical, preventing entities and individuals from recruiting, collecting funds or soliciting other forms of support for terrorist activities to be carried out inside or outside Panama, in particular:

- **The carrying out, within or from Panama, of recruiting, collecting of funds and soliciting of other forms of support from other countries; and**
- **Deceptive activities such as recruitment based on a representation to the recruit that the purpose of the recruitment is one (e.g. teaching) different from the true purpose and collection of funds through front organizations.**

For this question, please refer to our reply to question 6. It should be pointed out that educational activities are also regulated by the Ministry of Education, which recognizes as educational bodies only those that meet the requirements set forth in the Act on the subject.

• By what means is Panama currently able to control the establishment and operation in its territory of paramilitary groups that have the potential to engage in terrorist activities?

Article 37 of Decree Law No. 16 of 30 June 1960, as replaced by article 10 of Act No. 6 of 5 March 1980, establishes restrictions on immigration to our country. Paragraphs (g) and (h) establish the following provisions for controlling the entry of paramilitaries into the country and their subsequent establishment therein:

Article 37: Aliens in any of the following circumstances may not immigrate to Panama:

(g) Aliens belonging to parties, groups or organizations that aim to destroy the established political and social order;

(h) Anarchists, terrorists and other persons who advocate the use of force and violence against the established authorities in order to sow confusion and spread chaos.

• Apart from article 312 of the Penal Code, what measures are in place in Panama to prevent terrorists obtaining weapons within or outside its territory, in particular small arms or light weapons? What is the legislation concerning the acquisition and possession, and import and export, of weapons?

The competent authorities of the Republic of Panama apply the following specific measures against illicit arms trafficking:

Decree No. 354 of 29 December 1948

"Regulating the use of weapons, ammunition and explosives"

Article 8: Shotguns and small-calibre rifles for sports target practice and their cartridges, and primers and ammunition for those purposes may be legally traded, but their sale and use are restricted under the provisions of this Decree and as required by the Police in each case.

Article 10. The import of revolvers, shotguns, small-calibre rifles and other firearms, cartridges, primers and similar legally tradable articles for hunting or sports shall require written authorization from the Ministry of the Interior and Justice, following a favourable opinion from the Chief of Police. The use of such

articles shall be restricted to the specific purpose for which each licence is granted by the competent authority.

Article 16: Persons wishing to purchase legally tradable firearms from establishments in Panama must obtain a licence from the commander or chief of the appropriate police station.

Article 25: Legally tradable weapons, ammunition and explosives imported without prior authorization from the Ministry of the Interior and Justice or without payment of the corresponding duties shall be considered contraband and, as such, shall be seized by the police and confiscated by the Ministry of Finance and the Exchequer, which shall impose the penalties established in the laws and decrees on fiscal fraud, without prejudice to other penalties that may be imposed on an importer that uses or sells them without a licence.

Article 26: Weapons or war materiel imported without a licence from the Ministry of the Interior and Justice or illegally manufactured in Panama, or used by unauthorized persons, shall be seized by the police and confiscated by the Ministry of the Interior and Justice, which shall arrest or fine the perpetrators under the provisions of this Decree, without prejudice to other penalties that may be imposed on them for other misdemeanours or offences committed with such weapons.

Article 27: Weapons, ammunition or explosives, even if legally tradable, shall also be seized by the police and confiscated by decision of the provincial governors when they are used without a licence from the competent authority or employed to commit any misdemeanour. In the case of a crime, the confiscation shall be ordered by the competent judicial authority.

Article 28: The Police shall be authorized to search persons presumed to be making unlawful use of weapons, and to inspect places or vehicles where it suspects that weapons, ammunition or explosives are being kept illegally.

Act No. 14 of 30 October 1990

"Whereby article 307 of the Political Constitution is developed, amending some articles of the Fiscal Code and enacting other provisions":

Pursuant to the legal instruments mentioned above, the following are legally tradable and subject to the provisions thereof:

*Firearms not intended for military purposes, i.e. hunting guns, guns for sports training and those allowed to be used for self-defence, as listed below:

a. Handguns, provided they cannot be fired automatically (in bursts or machine-gun action). These include revolvers and pistols of any calibre.

b. Long-barrelled weapons, provided they cannot be fired automatically (in bursts or machine-gun action). These include rifles and hunting guns of any calibre, single- or double-barrelled, lever-action, manual and semi-automatic, holding one or more cartridges. Weapons not considered to be automatic are those whose trigger needs to be pulled each time they are fired, even if they are self-loading. Automatic weapons are military weapons that are fired uninterruptedly (in bursts or machine-gun action) when the trigger is held down.

c. Ammunition for the above.

d. Components (cartridges and cartridge casings, primers, powder, bullets or projectiles, and shot) and equipment for reloading ammunition.

e. Non-lethal articles for self-defence such as small aerosol or similar sprays, safety flashlights with a mechanism for emitting capsaicin oleoresin gas, combination flashlight/siren/electrical device emitting 60,000 volts.

Article 6: In accordance with Decree No. 66 of 9 February 1990, the appropriate licence must be obtained for bearing the weapons described in article 4 of this Act. However, a licence to bear weapons shall not be granted to:

1. Persons with a criminal or police record suggesting to the competent authority that they may be dangerous;

2. Persons who are mentally deranged or habitually inebriated;

3. Minors.

Article 9: The Executive Branch is empowered by statutory authority, through the Ministry of the Interior and Justice, to limit, oversee, supervise and regulate the functioning and operation of companies manufacturing, importing and selling authorized weapons and ammunition, restricting the import of weapon parts, components and loading equipment, accessories and non-lethal articles for self-defence; private security agencies that may import and sell arms and ammunition; and other arms-related activities, such as gunsmiths, training areas and firing ranges.

Decree No. 2 of 2 January 1991: "Adopting measures concerning the import and sale of weapons, ammunition, accessories and non-lethal defensive article, and enacting other provisions":

Article 1: The Ministry of the Interior and Justice may authorize natural or legal persons to run and operate commercial enterprises engaged in the import and sale of weapons, accessories, ammunition and defensive articles not used for hunting, sport or self-defence.

Article 2: Commercial enterprises engaged in the import and sale of weapons, ammunition, accessories and non-lethal defensive articles shall be specifically, but not exclusively, subject to inspection by the following State bodies:

a. The Ministry of the Interior and Justice, regarding the enforcement of this Decree and of the decisions and circulars.

b. The Criminal Investigation Service, regarding control of arms, ammunition, accessories and non-lethal defensive articles.

Article 3: Natural or legal persons who apply for authorization to import and sell weapons, ammunition, accessories and non-lethal defensive articles must submit the following documents:

a. An application on stamped paper, submitted through a lawyer and clearly stating the activity to be undertaken by the company.

b. Copy of the partnership agreement.

c. Certified copy of the provisional licence issued by the Ministry of Commerce and Industry, stating the exact domicile of the company, which must be located on the ground floor.

d. Certification by the Public Registry of the company's existence and legal representation, directors and officers, with their respective personal identity numbers and the resident agent.

e. Certification issued by the company treasurer of the Shares Register, containing the names of all shareholders. All shares must bear the names of their holders.

f. Police record of the legal representative.

g. Certification issued by the company auditor of the inventory of assets and the names of the company's financial beneficiaries. This information may be verified at any stage during the company's operation. Natural persons must fulfil the requirements set out in subparagraphs (a), (c), (e) and (f).

Article 4: Members of the Armed Forces and the Criminal Investigation Service may not, personally or through third parties, be directors, officers or shareholders of companies that import and sell weapons, accessories, ammunition and non-lethal defensive articles and may not act as their legal representatives.

Article 6: The directors, officers or shareholders of commercial companies engaged in the import and sale of weapons, accessories, ammunition and non-lethal defensive articles must be persons of proven morals and good character.

Article 7: As established in Decree No. 66 of 9 February 1990 and Act No. 14 of 30 October 1990, authorization shall be granted only for the import and sale of the following weapons, ammunition, accessories and non-lethal defensive articles:

1. Weapons of permitted calibres:

   a. Pistols: 22, 25, 7.65, .380, .45 and 9 mm.

   b. Revolvers: 45, 38, 32, 22 Magnum, .357, .41 and .44.

   c. Hunting rifles.

   d. Manual single- and double-barrelled shotguns.

   e. Carbines: extra-long .22.

2. Ammunition of permitted calibres, provided they do not include ammunition for war or military use, such as:

   a. Armour-piercing ammunition.

   b. Teflon ammunition or ammunition with steel, iron or bronze, tungsten or uranium core (metal-piercing).

   c. Explosives with any type of explosive primer or mercury in the projectile.

   d. Tracer ammunition, with primers in the projectile base, for identifying the path of automatic fire and for incendiary purposes.

3. Non-lethal defensive articles: fine-spray or similar aerosol devices, safety flashlight with a device for emitting capsaicin oleoresin gas in small quantities, combined flashlights/electrical instruments up to 60,000 volts.

Article 8: Applications to import weapons, ammunition, accessories and non-lethal defensive articles, as described in the preceding article, shall contain a

detailed description, accompanied by the catalogue, pamphlet or brochure, duly translated into Spanish if necessary, providing at the least the following information: make, calibre, model, type and other distinguishing features; place from which the merchandise will be imported; name or trade name of the exporter; and intended use.

Authorization to import weapons, ammunition, accessories and non-lethal defensive articles must be obtained before the articles enter the national territory.

Article 10: Accessories that may be used to manufacture a weapon or to transform one into an unauthorized weapon may not be imported or sold.

Article 11: Before removing the merchandise from customs, the interested parties must provide a certified copy of the decision of the Ministry of the Interior and Justice authorizing the import and the customs clearance bearing the seal of the Ministry.

Authorizations issued by the Ministry of the Interior and Justice for the import of weapons, ammunition, accessories and non-lethal defensive articles may be used only once.

Article 13: Companies engaged in the import and sale of weapons, ammunition, accessories and non-lethal defensive articles are required to provide the Ministry of the Interior and Justice with a complete monthly inventory of stocks of such objects, indicating the month and giving the name, personal identity number, telephone number, domicile and weapon licence number of each purchaser, together with a description of the merchandise.

Article 15: Directors, officers and shareholders who have been convicted of offences of wilful wrong specified in the Penal Code shall be prohibited from participating in commercial companies engaged in the sale of weapons, ammunition, accessories and non-lethal defensive articles.

Article 17: The commercial activity of sale of weapons, ammunition and non-lethal defensive articles may be performed only by Panamanian nationals. If the activity is performed by a legal person, the directors, officers and shareholders must meet the requirements for engaging in retail trade.

Article 19: Natural persons seeking authorization to import for personal use weapons, ammunition, accessories and non-lethal defensive articles for hunting, self-defence or sport must provide:

a. An application on stamped paper, submitted through a lawyer, to the Ministry of the Interior and Justice, with a detailed description of the articles they wish to import, a precise indication of the purpose for which they will be used and a justification of the need for them.

b. A photocopy of the personal identity card.

c. Police record.

Natural persons may import only three (3) weapons every five years.

Article 22: Itinerant trading in weapons, ammunition, accessories and non-lethal defensive articles is prohibited, as are announcements of cut-price, specially discounted, or illegally imported articles.

Executive Decree No. 409 of August 1994: "Repealing Executive Decrees No. 66 of 9 February 1990 and No. 73 of 15 March 1993 and regulating the procedure for issuing licences to bear firearms.":

Article 1: The authority to issue licences to bear firearms is delegated to the Criminal Investigation Service, subject to supervision and inspection by the Ministry of the Interior and Justice, pursuant to the provisions of this Decree.

Article 2: Persons wishing to obtain licences to bear weapons must apply to the Director of the Criminal Investigation Service and provide the following documents:

(a) Application on a form provided by the Criminal Investigation Service, stating the reason for acquiring the weapon. The reasons need not be explained if the application is only for renewal of licences for the same weapons;

(b) A legible photocopy of the personal identity card or document of residence in the national territory;

(c) Three (3) passport-size photographs;

(d) A receipt for the purchase of the weapon or a note confirming the transfer or gift of the weapon;

(e) The annual sum of 11 balboas (B11.00) for payment of licence fees, in accordance with Act No. 11 of 1941;

(f) When the weapon is registered for the first time, it must be produced, with three (3) bullets, for a ballistics test.

Paragraph 1: The Criminal Investigation Service shall be responsible for checking the criminal and police record of persons wishing to obtain a licence to bear firearms.

Paragraph 3: Aliens who are resident in the national territory and authorized to work must, in addition to meeting the requirements set forth in this Decree, provide a certificate from the State body which gave the authorization.

Article 3: Legal persons wishing to obtain a licence to bear weapons must, in addition to meeting the requirements set forth in article 2 of this Decree, provide a certificate from the Public Registry corroborating the company's existence and legal representation and its officers, as well as a note indicating the person or persons authorized to use the weapon and the post they occupy in the company.

Article 8: The Directorate of the Criminal Investigation Service may revoke licences to bear firearms, by means of a duly reasoned decision, in the following cases:

(a) When the licence holder has been convicted, by an enforceable sentence of competent authorities, of any offence punishable by a prison sentence;

(b) When the person in possession of the licence has been caught in flagrante delicto;

(c) When unlawful use is made of the licence;

(d) When unlawful use is made of the registered weapon so as to endanger the person's life or the life of other persons;

(e) Non-compliance with the provisions regulating the handling of weapons.

Act No. 53 of 12 December 1995: "Characterizing and penalizing the offence of possession of and trade in prohibited weapons, amending and adding articles to the Penal Code, amending one article of the Judicial Code and enacting other provisions":

Article 1: The penalty imposed by the competent administrative authority on a person possessing a firearm without legal authorization to do so shall be a fine of 200 to 1,000 balboas or three to six months' imprisonment.

Article 2: A person in possession of a firearm who has erased or altered its registration number shall be sentenced to two to three years' imprisonment.

Article 3: A person possessing a firearm the bearing of which is prohibited by law, as determined by the Executive Branch, shall be sentenced to three to five years' imprisonment.

The sentence shall be four to seven years if the person imports, or attempts to take out of the country, weapons whose use is prohibited by law.

Article 4: A person who sells or transfers, in any capacity, weapons that it is prohibited by law to possess or bear shall be sentenced to 5 to 10 years' imprisonment.

Panama has taken the necessary practical steps to detect and prevent illicit trafficking in firearms, ammunition, explosives and other related materials between its territory and that of other States. For instance, controls have been strengthened at export points. In addition, the Republic maintains constant contact with the countries of the region, with a view to preventing Panama from being used as a bridge for illicit trafficking in weapons.

• Paragraph 2 (b)

• Noting the role of Panama in the relevant activities of the Organization of American States, the Committee would be grateful for information on the following points:

- **Does Panama have a body specialized in counter-terrorism, or is that the responsibility of a number of departments or agencies? In the latter case, how is coordination between the various entities effected?**
- **Does each agency define its strategy independently, or does it carry out measures that have been established at a higher level? Who determines that policy and, if applicable, the distribution of tasks among agencies?**
- **Please describe the mechanism in Panama to provide early warning to other countries of terrorist acts that could be committed in those countries.**

With a view to enhancing coordination between the various State departments and security agencies concerned with the different prevention and monitoring actions regarding possible terrorist activities in Panama, the Executive Secretariat of the Council for Public Security and National Defence was set up to coordinate these activities. The Council comprises the President of the Republic, the Minister of the Interior and Justice, the Minister for Foreign Affairs, the Minister of Economy and Finance and the Executive Secretary of the Council. It is responsible for determining the necessary strategies to take preventive and combative measures against terrorist

activities in Panama or terrorist activities that could affect other countries. The Executive Secretariat of the Council is responsible for the coordination and follow-up to effective implementation of these measures.

The Executive Secretariat of the Council coordinates and participates in the work of two Committees. The first is the Comprehensive Security Committee, comprising the Directors of the police, navy, air force and institutional protection services, and also attended by the Director of Criminal Investigation Service. This Committee analyses any intelligence information considered to be of a sensitive nature in terms of national security.

Secondly, the Executive Secretariat coordinates the work of the National Crisis Coordination Centre, charged with gathering and disseminating information, as well as preparing contingency plans for states of emergency declared by the President of the Republic. It manages, collates and disseminates all information concerning any event that the President of the Republic declares to be critical.

Within the framework of the Council's Executive Secretariat, a Department of Transnational Affairs has been given a number of tasks, including strategic analysis of international conflicts, activities of non-State actors and any situation or activity likely to influence or constitute a threat to the public order or national security of Panama. In the area of tactical intelligence, the Counter-Terrorism Intelligence Unit (UIAT) has responsibility for monitoring persons or groups considered to have possible links to terrorist activities. An inter-agency unit has also been set up to detect and prevent threats to the regular functioning, infrastructure and users of the Panama Canal.

In order to provide early warning to other countries of terrorist acts that could be committed there, the Republic of Panama has links with INTERPOL, and the Executive Secretariat of the Council maintains permanent contact with national security chiefs and corresponding agencies in other countries.

- **Paragraph 2 (c)**

- **What provisions exist to exclude from Panama asylum seekers, and others, who are persons of the kind mentioned in subparagraph 2 (c) of the resolution?**

With a view to excluding from Panama asylum seekers, and others, who are persons of the kind mentioned in subparagraph 2 (c), the provisions contained in Decree Law No. 16 of 30 June 1960 and Act No. 6 of 5 March 1980 establish limits on immigration into Panama. Thus, persons who finance, plan or perpetrate terrorist acts, pledge support for such acts or offer protection to terrorists, may be refused entry into Panamanian territory, pursuant to article 37 of Decree No. 16, replaced by article 10 of Act No. 6, which mentions:

"(g) Aliens belonging to parties, groups or organizations that aim to destroy the established political and social order;

(h) Anarchists, terrorists and other persons who advocate the use of force and violence against the established authorities in order to sow confusion and spread chaos."

Moreover, up-to-date lists are kept of persons suspected of having any kind of link to terrorist activities. Any such person or persons applying for an entry visa into the country, also depending on their nationality, shall have their application denied.

Even though the Republic of Panama, through Act No. 5 of 26 October 1977, adopted the 1951 Geneva Convention relating to the Status of Refugees and the 1967 Protocol, they do not apply automatically. Checks are carried out on a case-by-case basis for persons applying to enter the country as asylum seekers. (See the reply to question No. 27 (paragraph 3 (f)) concerning the procedure and mechanisms for ensuring that refugee status shall not be granted to asylum seekers with a record of involvement in terrorist activities).

• The Committee looks forward to receiving the report on migration and security controls mentioned in paragraph 6 of the report and will be particularly interested in its treatment of the question of asylum seekers.

The National Directorate of Migration and Naturalization has offices located in various areas of the country to monitor persons entering and leaving Panama using any of the various means of transport. There are two international airports in the capital of Panama, and another airport in Chiriquí province. Shipping is monitored as it enters or leaves the country by migration staff in offices located in San Blas, Colón and Vacamonte, while migration inspectors check overland transport at border control posts in Puerto Obaldía, Jaqué, La Palma, Metetí, Changuinola, Bocas del Toro, Chiriquí Grande and Paso Canoas.

These inspectors are trained to identify possible forgeries or irregularities in the travel documents of Panamanian and foreign citizens when such documents are requested. Travellers entering the country are required to produce all the documents requested, which may differ from one case to another. Moreover, migration inspectors may conduct a short interview to corroborate information supplied on the arrival or departure card.

Persons wishing to enter the country must hold a valid visa, the specific type of which depends, inter alia, on the nationality of the person in question and on whether a visa waiver agreement exists with the country of his or her nationality. The Directorate of Migration maintains up-to-date lists of persons suspected of having any kind of link to terrorist activities or of financing such activities. In such cases, visa applications or attempts to enter the country will be denied. These lists are compiled on the basis of information supplied by the United Nations Security Council through its various resolutions or through the exchange of information between different intelligence agencies. The same lists serve as a basis for denying applications for naturalization from persons already in Panama who are seeking Panamanian citizenship.

Any alien seeking to enter the territory of the Republic in breach of the national legislation concerning migration or apprehended within the national territory without documentation attesting to legal entry, residence or stay in the country, according to legal requirements, shall be handed over to the Directorate of Migration of the Ministry of the Interior and Justice within 24 hours.

In order to protect public order and security, the authorities of the Republic of Panama have the power to deny entry into or transit through Panama to any foreign national. Aliens already resident in Panama may also be expelled from the national territory for the same reasons.

Permanent National Maritime Service patrols control borders and carry out security checks in territorial waters in the Atlantic and the Pacific, in order to prevent illegal immigration into the country by sea and other unlawful activities. Police patrols also operate along both borders, comprising border police officers along the border with Colombia and Special Operations Group officers along the border with Costa Rica. Both the border police and the Special Operations Group are constantly patrolling unofficial routes, with a view to preventing illegal immigration, arms dealing and drug trafficking.

Air controls are carried out to identify non-authorized flights, through the radar centre of the Directorate of Civil Aviation, with emphasis on restricted areas such as the Panama Canal.

Trained staff from the Directorate General of Customs are responsible for detecting irregularities in luggage or among the passengers themselves. Passengers are checked on entering and leaving the country. The airline conducts inspections of luggage travelling in the hold, according to its own procedures and using its own X-ray machines. Passengers and their hand luggage are checked on departure by X-ray machines and metal detectors. On arrival, passengers and their hand luggage are inspected by customs staff trained specifically for that purpose. If, during the course of an inspection, members of staff discover weapons, drugs, undeclared currency, or any other illegal or unlicensed substance or article, should such a licence be required, they shall confiscate such goods and hand the passenger over to the competent authority for subsequent investigation.

The following measures, inter alia, have been adopted to protect airport security: restricted access to airport terminals; requirement to produce personal identification documents on domestic flights and attach copies thereof to boarding documents; constant vigilance in the docking area; meticulous inspection of international luggage; coordination with the various airline companies for the provisions of passenger lists for incoming and outgoing flights; establishing single points of arrival and departure, and bans on the possession of any kind of weapon.

- **Subparagraph 2 (e)**

- Pending the entry into force for Panama of the Rome Statute of the International Criminal Court, what is the competence of the courts of Panama to deal with criminal acts of each of the following kinds:

- an act committed outside Panama by a person who is a citizen of, or habitually resident in, Panama (whether that person is currently present in Panama or not);

- an act committed outside Panama by a foreign national who is currently in Panama?

The Rome Statute of the International Criminal Court, adopted by Act No. 14 of 13 March 2002, entered into force in Panama on 1 July 2002. The Penal Code of Panama, however, contains two articles which relate to the circumstances referred to in this question and which clearly establish the jurisdiction of Panamanian courts for such cases. Article 9 reads as follows:

Article 9: Panamanian penal law shall apply in cases of offences committed abroad when the acts:

1. Produce or were intended to produce effects, in whole or in part, in Panamanian territory.

2. Are carried out against a Panamanian citizen or infringe his rights.

3. Are committed by public servants or agents in abuse of their powers or violation of the responsibilities of their post or mandate.

4. Are committed abroad by persons in the service of the State of Panama and would not be judged in the place of commission because of diplomatic or functional immunity, and

5. Involve offences committed by Panamanians abroad and a request from another State for extradition with a view to trial would be denied because of their nationality.

In cases where an offence is committed by an alien outside Panama, article 10 of the Penal Code provides for the following:

Article 10: Notwithstanding the legal provisions in force in the place of commission of the offence and the nationality of the accused, Panamanian penal law shall apply to anyone committing offences as defined in the international treaties ratified by the Republic of Panama.

In order for the above-mentioned offences to be tried and punished in Panama, the accused must be in the territory of the Republic.

- **Subparagraph 2 (f)**

- **Please provide a list of the bilateral and multilateral treaties on mutual assistance in criminal matters to which Panama is party.**

  - Act No. 20 of 22 July 1991 (Treaty on Mutual Assistance in Criminal Matters between Panama and the United States).
  - Act No. 11 of 7 July 1994 (Treaty on Mutual Legal Assistance between Panama and the United Kingdom).
  - Act No. 39 of 13 July 1995 (Treaty on Mutual Legal Assistance in Criminal Matters between Costa Rica, El Salvador, Guatemala, Honduras, Nicaragua and Panama).
  - Act No. 42 of 14 July 1995 (Agreement on Legal Assistance and Mutual Judicial Cooperation between Panama and Colombia).
  - Act No. 40 of 30 June 1998 (Treaty on Mutual Legal Assistance in Criminal Matters between Panama and Mexico).
  - Act No. 7 of May 1999 (Treaty on Mutual Legal Assistance between Panama and Spain).
  - Interim-American Convention on Mutual Assistance in Criminal Matters (Nassau, Bahamas, 23 May 1992) enacted by Act No. 52 of 17 October 2001.

- **What is the legal time frame within which a request for judicial assistance in criminal investigations or criminal proceedings (especially those relating to the financing or other support of terrorist acts) must be met and how long, on**

average, does it actually take in practice to implement such a request in Panama?

Judicial assistance requested under treaties on mutual legal assistance must be provided as soon as possible; the time required varies depending on the complexity of the evidence or proceedings. The process begins upon receipt of the request in the office of the corresponding central authority, which transmits it to the Supreme Court of Justice unless the matter is related to proceedings involving drugs. The Supreme Court determines a course of action in the national territory and orders compliance with the request, if feasible, by the corresponding judicial or administrative authority. In a drug-related matter, the request is transmitted to the Office of the Public Prosecutor which after deciding on the feasibility of the request will order a preliminary inquiry or compliance with the request. In practice, when a country makes a request for assistance, it indicates the time frame within which it would like to receive a response.

- **Subparagraph 2 (g)**

- **Please describe the mechanism for inter-agency coordination between the authorities responsible for narcotics, financial tracking and security, with particular regard to border controls necessary to prevent the movement of terrorist groups.**

Coordination mechanisms in the area of financial tracking are based on close and continuous communication by the Financial Analysis Unit with the Special Inspectorate for Drug-Related Crimes and other Special Inspectorates of the Office of the Public Prosecutor involved in investigating cases related to money-laundering; the Financial Investigation Unit of the Criminal Investigation Service; the General Directorate of Customs; the National Directorate of Migration and Naturalization; the Public Registry; the Centre for Investigation and Joint Cooperation of the Ministry of the Interior and Justice and other bodies, including the Superintendency of Banks of Panama, responsible for monitoring and oversight for the prevention of money-laundering.

- **What measures have been taken to prevent the counterfeiting, forgery or fraudulent use of identity papers and travel documents (as distinct from the punishment of persons who do so)?**

Several years ago the Republic of Panama introduced various measures to guarantee the security of all its identity and travel documents. The procedure for preparing personal identity documents involves a painstaking process aimed specifically at avoiding counterfeiting or forgery of those documents. They have a number of unique features, some of which are not visible to the naked eye; and require special machinery or equipment to detect them. These include the following: (a) the photo printed on the card is bordered by a thin line containing in continuous script the words "Electoral Tribunal". The photo on the document is computer-generated; (b) the cardholder's signature is printed on the card in a digital process; (c) under ultraviolet light, the card can be seen to be crossed from side to side by a series of horizontal wavy lines; (d) the plastic used to make the card is a special material.

The National Directorate of Passports of the Ministry of the Interior and Justice began on 31 July 1998 to modernize the system for issuing passports,

including a new document, the book-type passport, which incorporates the security measures recommended by international organizations such as the International Organization for Standardization (ISO) and the International Civil Aviation Organization (ICAO).

The Panamanian travel document contains more than 40 security measures, including: a digitalized personal information page; high-security laminate sold by the manufacturer only to governments; security colouring and printing features; special security fibres; security thread; watermarks; machine readability; compliance with international standards (ISO-ICAO); OCR-B type bar code; the cover, still sky blue in colour, has some four security measures; the inside front cover, which has the Panamanian flag on one side and a ship crossing the Panama Canal on the other, incorporates more than 12 security measures in total; the personal information page, on which all information is digitalized, including the signature and photograph, has one of the most secure laminates in the world; the signature of the authorized official approving issue of the passport appears on page 31; page 32 contains the machine-readable code included in the new Panamanian passport in accordance with the security standards of the international standardization and civil aviation organizations; the inside back cover contains more than four security measures including the coat of arms of Panama and the seal denoting payment of the passport tax.

The standard Panamanian passport is considered to be one of the most secure travel documents in the world; for example the United States Department of Defense "Orange Book" rates it at the C2 level.

Since introduction of the new Panamanian travel document by the National Directorate of Passports of the Ministry of the Interior and Justice, there have been few if any reports of counterfeiting or forgery.

Any person claiming to have lost for any reason his identity or travel document must provide proof that he has declared that loss in order to have a new one prepared. Lists of passports lost or cancelled for whatever reason are maintained with a view to identifying any fraudulent use thereof.

Panamanian penal legislation deals with counterfeiting of documents in Title VIII of the Penal Code, dealing with crimes against the public trust, specifically in Chapter I on counterfeiting of documents. Article 265 reads as follows:

Article 265: Anyone who counterfeits in whole or in part a legal document or a public or official document with criminal intent shall be subject to two to five years' imprisonment. If the act is committed by a public servant in the exercise of his duties, the punishment shall be three to six years' imprisonment.

- **Subparagraphs 3 (a), (b) and (c)**

- **Is there an institutional mechanism for implementing subparagraphs 3 (a), (b) and (c) of the resolution?**

The Republic of Panama believes that cooperation between intelligence services is essential for success in the fight against terrorism and related activities, since it facilitates exchange of experience and therefore the professional development of those dealing with such issues. Accordingly, the Executive Secretariat of the Council for Public Security and National Defence remains in

permanent liaison with similar services in other countries. Such communication, exchange and permanent cooperation is intended to monitor suspected terrorism and terrorism-related activities in other countries, thereby strengthening the capacity and effectiveness of the intelligence services, which are now recognized to be of vital importance in the fight against terrorism.

The agreements on exchange of information to which our country is currently a party have been mentioned above. Panama is also a party to bilateral and multilateral agreements and conventions for the purpose of preventing and punishing terrorist attacks. (The initial report contained a list of the conventions.)

- **Paragraph 3 (c)**

  - **What is the legal basis for extradition in Panama? In particular:**

  - **Is it governed, in any respect, by legislation? If so, please outline the legislation.**

Extradition is governed by everything mentioned in this report, and also by the provisions of bilateral and multilateral agreements to which Panama is a party. If no agreement is in force between Panama and another State involved in a matter of extradition, the relationship is governed by the Panamanian Judicial Code and the principle of international reciprocity.

The subject is dealt with in a number of legislative provisions contained in the Judicial Code, namely:

Article 2496. Extradition shall be governed by the provisions of the public treaties to which the Republic of Panama is a party and, in the absence of such treaties, by the following provisions, established in sections 1 and 2 of this chapter.

- **Section 1**

Extradition of persons sought by foreign authorities:

Article 2500. The Executive Branch, acting through the Ministry of Foreign Affairs, may, by way of reciprocity, grant the extradition of persons who have been tried and sentenced by the authorities of another State and are located in territory under the jurisdiction of the Republic of Panama. In order for extradition to be permissible, the acts constituting the offence for which the person sought has been tried, sentenced or prosecuted must have been carried out within the jurisdiction of the requesting State and must be punishable by a penalty of deprivation of liberty under the legislation both of that State and of the Republic of Panama.

Article 2501. The request for extradition must be made to the Ministry of Foreign Affairs through the corresponding diplomatic agent or, in the absence thereof, by the corresponding consular agent or that of a friendly nation, and must be accompanied by the following documents:

1. If the accused has been sentenced, a copy of the enforceable sentence and the evidence on which it is founded, if not included in the sentence;

2. If an accused person is involved, a copy of the committal order or warrant of preventive detention and of the evidence on which the related decisions are based;

3. An accurate account of the acts constituting the offence of which the person has been accused, insofar as they are not indicated in the documents mentioned in the preceding paragraphs;

4. The text of the applicable provisions of law, as well as those relating to the statute of limitations on penal action and punishment;

5. Personal data permitting identification of the person sought.

Article 2502. A request for extradition or a notice, given through the diplomatic channel, of the intention to submit such application formally on the basis of a specific criminal act shall give rise to the detention of the person sought, for a period of up to 60 days. Upon the expiration of that period he shall be released and may not be detained again for the same act, unless the request for extradition is submitted in accordance with the preceding article. Any liability arising from provisional detention shall belong exclusively to the State having requested that measure.

Article 2503. Upon receiving the formal request for extradition, the Ministry of Foreign Affairs shall examine the documentation presented. If the Ministry finds the documentation inadequate, it shall, before denying extradition on such grounds, grant the requesting State a reasonable time in which to correct the deficiencies indicated. If the person sought is in detention at the prior request of the requesting State, that State shall be notified that such person will be released after 60 days from the date of his detention if the request for extradition has not been duly completed by that time.

Article 2504. Extradition shall not be granted in the following cases:

1. If the person sought is Panamanian;

2. If the Panamanian courts are competent to try the person whose extradition is requested for the offence on which the request is founded;

3. If, in the opinion of the Ministry of Foreign Affairs, the person sought may be tried in the requesting State for an offence other than that constituting the grounds for the request for extradition or by an exceptional or ad hoc tribunal;

4. If extradition has previously been denied for the same offence, on the same grounds and in respect of the same person;

5. If the person sought has served his sentence or has been pardoned or amnestied in the requesting State or in the Republic of Panama for the offence constituting the grounds for the request for extradition;

6. If the institution of criminal action or the penalty which would have been imposed on the person sought had become barred by the statute of limitations, either under the legislation of the requesting State or under that of the Republic of Panama, prior to the request for extradition;

7. If, in the opinion of the Ministry of Foreign Affairs, the person or persons in question are being prosecuted for political offences or their extradition is being requested for reasons that are primarily political. The kidnapping, homicide or assassination of a Head of State or of any person in exercise of public authority at the time of such crime shall not be deemed a political offence;

8. If the penalty established for the offence in the requesting State is death, except in the case of a formal undertaking by the State to apply a less severe penalty to the person sought;

9. If the person sought is on trial or is serving a sentence in the Republic of Panama, in which case his surrender to the requesting State, if granted, shall be deferred until the criminal proceedings have been completed, if he is exonerated, or the sentence is served in full, depending on the case;

10. If the person sought has been tried in the Republic of Panama for the offence constituting the grounds for the request for extradition;

11. If so ordered by the Executive Branch in a decision stating the grounds.

Article 2505. Exceptionally, for reasons of public order and social interest, extradition or the simple and conditional surrender of an alien to the requesting State may be granted by the Executive Branch despite the fact that criminal proceedings are in progress or a sentence is being served in Panama, subject to the undertaking that, once the judicial proceedings for which he was sought have been completed, or once he has been exonerated or has been found guilty and served his sentence, he shall be returned to Panama to serve the sentence against him, if any, or to continue the criminal proceedings, if they are pending completion. In any event, the criminal proceedings being conducted in the Republic of Panama shall continue in the absence of the surrendered or expatriated defendant, who shall be given every guarantee of legal representation.

Article 2506. If extradition is denied on any of the grounds indicated in article 2504, subparagraphs 1 to 4, the person sought shall be tried in the Republic of Panama as though the offence with which he has been charged was committed in Panamanian territory.

Article 2507. If the Ministry of Foreign Affairs considers the request for extradition well-founded, he shall issue a decision to that effect, which shall be served upon the person sought. If that person freely expresses agreement to the requested extradition, he shall immediately be placed at the disposal of the requesting State.

The person sought may, within 15 days from the date on which the decision referred to in the preceding paragraph is served upon him, file an incidental plea of objection with the Criminal Division of the Supreme Court of Justice, which shall be examined at a hearing in which the Office of the Public Prosecutor is represented.

The following constitute grounds for objection:

1. The person in question is not the person whose extradition is requested;

2. The documents submitted exhibit formal defects;

3. The request for extradition is inadmissible on the grounds that the right of the requesting State is not adequately founded;

4. The request for extradition is contrary to law or to the provisions of a treaty to which the Republic of Panama is a party.

Article 2508. Upon the exhaustion of the plea procedure, the Second Chamber of the Supreme Court of Justice shall, within the next three business days, decide on the incidental plea and determine whether or not the requested extradition is to be

granted, communicating its decision immediately to the Ministry of Foreign Affairs and the person sought.

Article 2509. If the Second Chamber of the Supreme Court of Justice considers the objection well-founded, it shall revoke the decision of the Ministry of Foreign Affairs and order the immediate release of the person sought, if detained. If in the opinion of the Second Chamber of the Supreme Court of Justice the grounds for extradition are valid, the Executive Branch shall have the right either to grant or not to grant extradition, as it deems appropriate.

Article 2510. If extradition is granted, the requesting State must take custody of the person sought within 30 calendar days from the date on which he is placed at its disposal. Should it fail to do so within that time limit, the person sought, if deprived of liberty, shall be released.

Article 2511. The surrender of the person sought to the agents of the requesting State shall be effected at the place where the person is detained or in such place as is determined by the Executive Branch, unless otherwise agreed between the requesting State and the Republic of Panama.

The person sought shall be surrendered together with all the objects related to the offence and its perpetrators, without prejudice to the rights of third parties in respect of such objects.

Article 2512. All costs incurred in the extradition shall be borne by the requesting State.

Article 2513. Persons detained pursuant to a request for extradition may post a bond for their release from detention pending the final decision on the request in those cases in which Panamanian law grants that right.

Article 2514. Where more than one State requests the extradition of a person, preference shall be given to the request first submitted in proper form.

Article 2515. The Executive Branch may authorize transit through the territory of the Republic of Panama of extradited persons surrendered by other States to a friendly third nation and shall ensure that protection is provided to the drivers, so as to prevent escape.

No such authorization shall be granted, however, if the extradited person is Panamanian.

• Is it contingent, in any respect on the existence of bilateral treaties? If so, please provide a list of the countries with which Panama has concluded relevant bilateral treaties.

Extradition is not necessarily strictly contingent on the existence of bilateral treaties. The response to question 3 (c) explains in detail the juridical basis for extradition in Panama and the multilateral conventions and bilateral treaties on extradition which are currently in force are listed below:

Multilateral conventions on extradition

1. Convention on Private International Law (Bustamante Code), Title III: Extradition. Signed at Havana on 20 February 1928, adopted by Act No. 15 of 26 September 1928. Official Gazette No. 5402 of 17 November 1928. Instrument of

ratification deposited on 26 October 1928. Entered into force for Panama on 25 November 1928.

2. Convention on Extradition

Signed at Montevideo on 26 December 1933

Entered into force on 26 January 1935

Approved by Act No. 4 of 27 September 1938

Gaceta Oficial No. 7881 of 5 October 1938

Instrument of ratification deposited on 13 December 1938

Entered into force for Panama on 13 December 1938

3. Inter-American Convention on Extradition

Signed at Caracas on 25 February 1981

Entered into force on 28 March 1992

Approved by Act No. 29 of 23 December 1991

Gaceta Oficial No. 21942 of 30 December 1991

Instrument of ratification deposited on 28 February 1992

Entered into force for Panama on 28 March 1992

4. United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances (Article 6: Extradition)

Done at Vienna on 20 December 1998

Entered into force on 11 November 1990

Approved by Act No. 20 of 7 December 1993

Gaceta Oficial No. 22429 of 9 December 1993

Instrument of ratification deposited on 13 January 1994

Entered into force for Panama on 13 April 1994

Bilateral extradition treaties currently in force

Colombia: Treaty on Extradition

Signed in Panama City on 24 December 1927

Approved by Act No. 16 of 17 September 1928

Gaceta Oficial No. 5380 of 6 October 1928

Exchange of instruments of ratification on 24 November 1928

Entered into force on 24 December 1928

Spain: Treaty on Extradition of Persons Accused of Crimes

Signed in Panama City on 15 May 1904

Approved by Act No. 47 of 15 July 1998

Gaceta Oficial No. 23588 of 17 July 1998

Exchange of notes for its entry into force dated 7 July and 7 August 1998

Entered into force on 6 September 1998

United States: Treaty on Extradition of Persons Accused of Crimes

Signed in Panama City on 5 May 1904

Approved by Act No. 75 of 14 June 1904

Gaceta Oficial No. 32 of 30 June 1904

Exchange of instruments of ratification on 8 April 1905

Entered into force on 8 April 1905

United Kingdom of Great Britain and Northern Ireland: Treaty on Extradition

Signed in Panama City on 25 August 1906

Approved by Act No. 5 of 26 January 1907

Gaceta Oficial No. 407 of 27 January 1907

Exchange of instruments of ratification on 15 April 1907

Entered into force on 15 April 1907

Mexico: Treaty on Extradition

Signed in Panama City on 23 October 1928

Approved by Act No. 40 of 20 November 1930

Gaceta Oficial No. 5876 of 20 November 1930

Exchange of instruments of ratification on 4 May 1938

Entered into force on 4 May 1938

Costa Rica: Treaty on Extradition

Signed in Bambito, Panama, on 29 November 2001

Note: pending approval by the Legislative Assembly

- **Subparagraph 3 (d)**

- The Committee would welcome a report, in relation to the relevant international conventions and protocols relating to terrorism, on the progress made by Panama in:

- Becoming a party to the instruments to which it is not yet a party; and

- Enacting legislation, and making other necessary arrangements, to implement the instruments to which it has become a party.

The importance of the issue of terrorism for the Republic of Panama has been proven by its ratification of various international instruments relating to terrorism, as follows:

- Convention on Offences and Certain Other Acts Committed on Board Aircraft (Tokyo, 14 September 1963)
- Organization of American States (OAS) Convention to Prevent and Punish Acts of Terrorism Taking the Forms of Crimes against Persons and Related Extortion that are of International Significance (Washington, D.C., 2 February 1971)
- Convention for the Suppression of Unlawful Seizure of Aircraft (signed in The Hague on 16 December 1970, Executive Decree No. 13 of 27 January 1972)
- Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation (signed in Montreal on 23 September 1971, Executive Decree No. 59 of 16 March 1972)
- Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents (adopted by the General Assembly of the United Nations on 14 December 1973, Act No. 8 of 29 October 1979)
- International Convention against the Taking of Hostages (adopted by the General Assembly of the United Nations on 17 December 1979, Act No. 9 of 6 November 1981)
- Convention on the Marking of Plastic Explosives for the Purpose of Detection (Montreal, 1 March 1991)
- Convention on the Physical Protection of Nuclear Material (signed in Vienna on 3 March 1980, Act No. 103 of 30 December 1998)
- Protocol for the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation, supplementary to the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation (signed in Montreal on 24 February 1988, Act No. 6 of 3 January 1996)
- Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation (done in Rome on 10 March 1988, Act No. 21 of 9 May 2002)
- Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms Located on the Continental Shelf (done in Rome on 10 March 1988, Act No. 21 of 9 May 2002)
- International Convention for the Suppression of the Financing of Terrorism (adopted by the General Assembly of the United Nations on 9 December 1999, Act No. 89 of 15 December 1998)

- **Subparagraph 3 (e)**

• The CTC notes that article 4 of the Panamanian Constitution provides for conventions to have the force of law in Panama upon Panama becoming party to them. How does Panama discharge the obligation in the relevant international conventions and protocols to legislate with respect to matters specified in those conventions or protocols or to include particular provisions in bilateral treaties?

Article 4 of the National Constitution of Panama states that "The Republic of Panama abides by the rules of international law". This means that Panama recognizes as binding any obligations acquired by it as a subject of international law. Performance of those obligations may not, however, conflict with other principles also established in the Constitution. Accordingly, the principle of legality requires that the necessary legislative adjustments be made and this process is under way for the cases mentioned above.

• Have the offences set forth in the relevant international conventions and protocols been included as extraditable offences in the bilateral treaties to which Panama is party?

Panama applies a principle of double incrimination with regard to extradition. In order for extradition to be carried out, the offence must be a crime under the legislation of both countries, as is stated in Article 2500 of the Judicial Code:

Article 2500. The Executive Branch, acting through the Ministry of Foreign Affairs, may, by way of reciprocity, grant the extradition of persons who have been tried and sentenced by the authorities of another State and are located in territory under the jurisdiction of the Republic of Panama. In order for extradition to be permissible, the acts constituting the offence for which the person sought has been tried, sentenced or prosecuted must have been carried out within the jurisdiction of the requesting State and must be punishable by a penalty of deprivation of liberty under the legislation both of that State and of the Republic of Panama.

• Subparagraph 3 (f)

• What legislation, procedures and mechanisms are in place to ensure that refugee status is not granted to asylum-seekers who have been involved in terrorist activity?

As mentioned in the reply to question 15, the Republic of Panama has adopted the 1951 Geneva Convention and the 1967 Protocol Relating to the Status of Refugees. This instrument became Panamanian law through Executive Decree No. 23 of 10 February 1998. The text of the Decree is divided into two Titles: the first governs matters relating to the status of refugees, while the second lays down the rules for temporary protection on humanitarian grounds.

Executive Decree No. 23 clearly defines which persons may be granted the benefits of refugee status. These are the so-called "inclusion clauses". For instance, article 1 of the Decree states that: "Any person fulfilling the requirements of article 1 of the 1951 Convention and the 1967 Protocol Relating to the Status of Refugees shall be entitled to seek protection within the territory of the Republic for the purpose of safeguarding his or her life, personal integrity, freedom and security, including that of his or her immediate family". However, refugee status is not granted automatically.

The Decree cannot be applied to persons covered by the so-called "exclusion clauses", i.e., paragraphs 3 (a), (b) and (c), of article 71 of Executive Decree No. 23. Paragraph 3 determines which persons are not regarded as deserving of international protection, namely:

(a) Those who have committed a crime against peace, a war crime or a crime against humanity.

(b) Those who have committed a serious ordinary crime (not a political offence) outside the country of refuge before being admitted to that country.

(c) Those who have been guilty of acts contrary to the purposes and principles of the United Nations.

As for procedure and other mechanisms, a case-by-case examination is made of applications for refugee status in order to ascertain that the conditions exist for such status to be granted, and also that the applicant does not fall within any of the exclusion clauses mentioned above. This procedure is coordinated by the National Office for the Protection of Refugees (ONPAR) of the Ministry of the Interior and Justice. However, the body responsible for granting or refusing refugee status to those who apply for it is the National Commission for the Protection of Refugees. This Commission meets every three months to consider applicants' cases.

It is therefore the Commission which has the responsibility of deciding whether an applicant is entitled to the benefits of refugee status (inclusion clause). It is also the Commission which decides whether an applicant for refugee status does not deserve international protection (exclusion clauses). In addition, the Commission is responsible for revoking refugee status (revocation clause) from any persons holding that status who forfeit it as a result of breaching the terms or legal provisions laid down for refugees in the Decree.

Even where refugee status is granted, there is a possibility that it may be revoked. Article 69 of the Decree defines the grounds for revoking the status of refugee. These include cases in which a refugee is found to have supplied false information in order to obtain the status, or where a refugee, when being interviewed, has concealed the fact of having taken part in any of the activities covered in the exclusion clauses.

The information required from an applicant seeking refugee status includes general data such as: date of birth, nationality, civil status, occupation, education, identification, information on accompanying persons, if any; reasons for leaving his or her country; route taken to reach Panama; religion professed and whether any problems have been experienced on that ground; whether the applicant has performed military service; whether the applicant or any close relative has taken part in any paramilitary or guerrilla group; whether the applicant has experienced problems due to membership of a particular ethnic group. Questions are also asked about the applicant's stay in Panama, such as: place of residence; whether he or she has any form of employment; what assistance has been received; the family situation as regards food, health, education and other needs; whether any children have been born in the country; whether there are friends or relatives in the country. These and other enquiries which the responsible authorities consider necessary are completed before the State grants refugee status.

- **Subparagraph 3 (g)**

- **Is it possible under the laws of Panama for requests for the extradition of alleged terrorists to be refused on political grounds?**

In Panama, if a person commits any offence defined in our legal system as such, for example homicide, this will not be treated as a political offence even if the motive was solely political. In such cases the above-quoted article 24 of our

Constitution, which stipulates that Panama will not extradite nationals or aliens for political offences, will not apply.

Panama will not refuse to extradite alleged terrorists who claim political motives. Article 2504, paragraph 7, of the Judicial Code, referred to earlier in this report, states as follows:

Article 2504. Extradition shall not be granted in the following cases:

7. If, in the opinion of the Ministry of Foreign Affairs, the person or persons in question are being prosecuted for political offences or their extradition is being requested for reasons that are primarily political. The kidnapping, homicide or assassination of a Head of State or of any person in exercise of public authority at the time of such crime shall not be deemed a political offence.

- **Paragraph 4**

- **Has Panama addressed any of the concerns expressed in paragraph 4 of the resolution?**

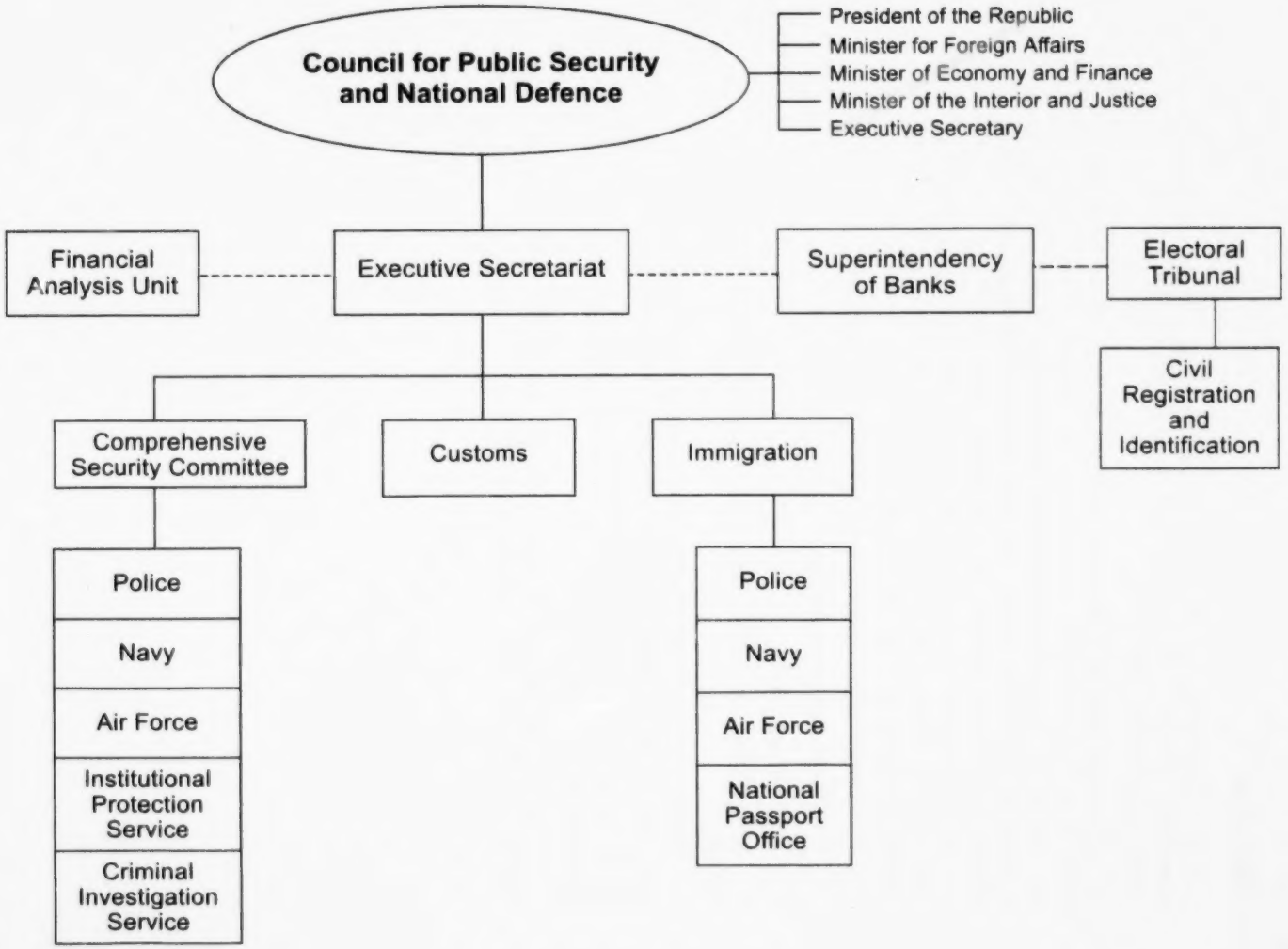
The Republic of Panama has addressed the concerns expressed by ratifying international conventions and treaties on terrorism and transnational crime.

In addition, our criminal law penalizes money-laundering and related offences.

The State, conscious of the need to coordinate initiatives at the national, subregional and international levels, plays an active part in meetings of commissions of the Organization of American States such as the Inter-American Drug Abuse Control Commission (CICAD) and the Inter-American Committee Against Terrorism (CICTE); and in United Nations bodies such as the Counter-Terrorism Committee, among others.

- **Other matters**

- **Could Panama please provide an organizational chart of its administrative machinery, such as police, immigration control, customs, taxation and financial supervision authorities, established to give practical effect to the laws, regulations and other documents that are seen as contributing to compliance with the resolution.**


Council for Public Security and National Defence
President of the Republic
Minister for Foreign Affairs
Minister of Economy and Finance
Minister of the Interior and Justice
Executive Secretary
Financial Analysis Unit
Executive Secretariat
Superintendency of Banks
Electoral Tribunal
Civil Registration and Identification
Comprehensive Security Committee
Customs
Immigration
Police
Navy
Air Force
Institutional Protection Service
Criminal Investigation Service
Police
Navy
Air Force
National Passport Office

Annex 1

Penal Code

Article 242. When three or more persons associate together for the purpose of committing offences, each of them shall be punished, for that act alone, by imprisonment for one to three years.

The penalty shall be increased by one fourth for those who instigate, lead or direct the unlawful association.

Article 311. Anyone who participates in the destruction, in whole or in part, of a specific group of human beings, on grounds of their nationality, race or religious or political beliefs, shall be subject to 15 to 20 years' imprisonment.

The same penalty shall apply to anyone who, in order to destroy, in whole or in part, a specific group of persons and for the reasons described in the previous paragraph, commits any of the following acts:

1. Causes bodily or mental harm to members of these groups;

2. Places such groups at risk;

3. Prevents births;

4. Transfers children, by force or intimidation, from one of these groups to another.

Article 312. Anyone who recruits persons, stockpiles weapons or carries out other hostile acts not approved by the Government and undertaken within the territory of the Republic or abroad against another State, thereby exposing Panama to the risk of war or the breaking-off of international relations, shall be subject to three to six years' imprisonment.

If, as a consequence of the above-mentioned acts, war is declared on the Republic, the penalty shall be 10 to 15 years' imprisonment.

United Nations S/2002/1185

Security Council

Distr.: General
21 October 2002

Original: English

Letter dated 18 October 2002 from the Chairman of the Security Council Committee established pursuant to resolution 1373 (2001) concerning counter-terrorism addressed to the President of the Security Council

I write with reference to my letter of 6 August 2002 (S/2002/896).

The Counter-Terrorism Committee has received the attached supplementary report from Georgia, submitted pursuant to paragraph 6 of resolution 1373 (2001) (see annex).

I should be grateful if you could arrange for the present letter and its annex to be circulated as a document of the Security Council.

(*Signed*) Jeremy **Greenstock**
Chairman
Security Council Committee established pursuant to
resolution 1373 (2001) concerning counter-terrorism

02-65809 (E) 051102

Annex

Letter dated 15 October 2002 from the Permanent Representative of Georgia to the United Nations addressed to the Chairman of the Security Council Committee established pursuant to resolution 1373 (2001) concerning counter-terrorism

I have the honour to transmit herewith the supplementary report submitted by Georgia pursuant to paragraph 6 of resolution 1373 (2001) (see enclosure).

(*Signed*) Revaz **Adamia**
Ambassador
Permanent Representative

Enclosure

Supplementary report of Georgia, submitted pursuant to paragraph 6 of resolution 1373 (2001)

Paragraph 1

Under art. 190 of the Code of Criminal Procedures of Georgia, the measure of seizure of property or bank account is used to satisfy a civil lawsuit, as well as other property penalties, provided there is data that the property will/has been hidden or is earned by criminal means.

On 7 June 2002 the Parliament of Georgia ratified the international Convention on Suppression of Financing of Terrorism and on 18 July 2002 deposed its instrument of ratification.

According to the legal conclusion of the Ministry of Justice of Georgia the Criminal Code of Georgia punishes/covers all offences provided by the International Convention for the Suppression of Financing of Terrorism.

In order to harmonize national legislation with the obligations of the UN General Assembly Resolution No. 1377, the Ministry of Justice of Georgia prepared a draft law on "Amendments to the Criminal Procedural Code of Georgia".

The draft law adds paragraph 2 to art. 190 (the purpose and ground for the seizure of property), which states that the measure of seizure of resources and/or property provided in the Criminal Procedural Code of Georgia, will apply to the cases of terrorism, its preparation or other grave crimes, to ensure prevention of these crimes, if the reasonable suspicion exists that the recourses and/or property will be used to commit such crime.

The above mentioned draft law was approved by the government of Georgia and is being considered by the Parliament of Georgia.

In order to harmonize national legislation with the obligations of the UN General Assembly Resolution No. 1377, the Ministry of Justice of Georgia prepared a draft law on "Alterations to the Criminal Code of Georgia", that provides sanctions for the commitments of terrorist crimes (art. 323 (terrorist act), 327 (creation, leading or participating in terrorist organizations)). These alterations provide that above mentioned crimes are considered to be the gravest crimes under art. 12 of the Criminal Code of Georgia; thus criminal liability will be imposed even at the stage of preparation of these crimes.

A new article (art. 324) of the Criminal Code of Georgia prescribes a new offence – Cyberterrorism. The notion of Cyberterrorism is a new definition, prescribed by the statute on Antiterrorism of the United States (US Patriot Act). The draft law definition of Cyberterrorism was formulated by analysis of the abovementioned Statute and according to the *corpus delicti* of crime of terrorism provided by the Criminal Code of Georgia. The article stipulates criminal responsibility for acquiring, use or threat of use of computerized information protected by the law as a result of illegal access, provided this action threatens public security, strategic, political or economic interest of a State, is intended to terrorize society and/or have impact on the authorities. The article consists of two paragraphs; The punishment under the first paragraph entails restriction of freedom from 8 to 15 years, by second para. – restriction of freedom from 12 to 20 years, or life imprisonment.

Taking into consideration the novel nature of the crime, in the Criminal Code a qualifying circumstances were added to the article 324 (Technological terrorism), according to which criminal liability was defined for committing the same actions causing substantial damage and other grave consequences.

Abovementioned draft law was approved on the session of Georgian Government and is submitted to Georgian Parliament for consideration.

According to provisions of the Georgian organic law "About National Bank" and Georgian law on "About Activates of Commercial Bank", Georgian National Bank has the authority to demand from banks information concerning their financial-economical activates, as well as information related to their monitoring. The national Bank also has authority, within the limits of its competency, to access to confidential information.

The concrete mechanism of legislative regulation, dealing directly with simulated contracts, is not available in Georgia. Suspicious actions, including simulated contacts that may have signs of criminal behavior (e.g. signs of legalization of illegal income), are dealt in accordance with General Procedural and preliminary investigation. Criminal Liability for legalization of illegal income is defined by article 194 of Georgian Criminal Code.

Legalization of illegal income

Legalization of illicit income i.e. giving a legal form to money or other property, as well as concealing the source, location allotment, circulation of illicit income, the actual owner or possessor of property or property shall be punishable by fine or by imprisonment of up to five years in prison.

Working out effective measures to combat money laundering, such as legalization of illegal income, remains a high priority in Georgia. In this regard, in Aril 2002 intersectional coordinating commission was created by the order # 395 of the President of Georgian. Its main objective is the development of action plan for fighting money laundering and presenting legislative initiatives/draft laws to the President of Georgia.

It has to be mentioned, that Georgia's Ministry of Finance and the National Bank have prepared two alternative draft laws addressing the problem of Money Laundering. Despite the important differences between the drafts, some fundamental provisions are included in both, which address the basic principles for the elaboration of a complete legislative package combating the problem of money laundering. We consider, that the comprehensive legislative package is needed, which will include law of Georgia on fighting illegal money legalization and an Act on the changes in Criminal Code of Georgia, as well as normative acts in connection with their implementation. Taking in consideration the abovementioned, we consider that scope of the package must include provisions requiring the officers of banks (or alike institutions), to notify immediately the competent law enforcement agency on money transfer done after certain time.

During the work on the draft law, it has to be taken in consideration that cash-based financial operations are still widely used in Georgia. From this point of view, the legal mechanism which will counter money laundering, has to consist of all necessary provisions, designed to assist law enforcement agencies to act immediately on suspicious financial operations and to take all requisite measures prescribed by the law. The establishment of a special service made up of prosecutors, investigators, financial experts, economists and the qualified taxation officers, which will act immediately to all related notices and, in case of need, will take the measures prescribed by law, is recommended.

It is also necessary to establish a network/link between the state and non state offices and institutions, whose activities, by their nature, entail theoretical risk of money laundering. Besides, united information network has to be established to ensure the immediate response by the competent institutions to the suspicious activities.

There is as also a need to review the Legislation on charitable and humanitarian organizations, as activities that carry high risk of money laundering.

The Georgian legislations has to be enhanced to enable appropriate law enforcement agencies to seize or freeze the financial assets, in cases where the legitimate suspicion exists that the resources will be used to commit or plan terrorist

crimes. In such cases, the identity of the bank account owner, shall be provided to the law enforcement agencies in accordance to the laws governing the privacy concerns.

Taking into consideration an international character of money laundering, international efforts have to be based not only on cooperation between the law enforcement bodies, but also between all institutions, which encounter this problem.

On 30 April 2002 Georgia signed the Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime. The Convention was submitted to the Parliament for ratification.

According to the legal conclusion of the Ministry of Justice of Georgia, the criminal legislation of Georgia requires amendments to ensure its compatibility with the Convention. The special commission has been set up by the Presidential decree to expeditiously prepare due amendments.

Sub-paragraph 2 (a)

The Law "On export control of armaments, military technology and dual-use materials production" regulates all issues related to the armaments export control. The sub-point of the 1st point of the article 19 of the Law of Georgia "On the licensing of interregnal activity and authorization" (which comes into force on 1 January, 2003), stipulates that the Ministry of Justice gives authorizations for the production of armaments, technical documentation concerning arms transit, re-export, import and expert of labor, services and material. The Ministry of Economy Industry and Trade is charged with authorizations concerning export, export and transit of dual-use materials.

In accordance with the Law of Georgia "On the bases of licenses of interregnal activity and authorizations", a new draft law has been prepared "On export control of armament, military technology and dual-use production".

Sub-paragraphs 2 (b) and (g)

According to the agreement between the Ministry of State Security Service, Ministry of Internal Affairs and Department of State Border Guard, the information about drug trafficking and suspicious movements on the borders is regularly exchanged. They carry out joint measures in order to assess the received information.

As a result of the joint actions of the Department of State Border Guard and the Ministry of Internal Affairs the following narcotics have been withdrawn: heroin, opium and marijuana.

Sub-paragraph 2 (c)

Georgia is a party to the Convention relating to the Status of Refugees (1951). According to Article 1, paragraph F of the Convention:

The provisions of this Convention shall not apply to any person with respect to whom there are serious reasons for considering that: (c) He/she has been guilty of acts contrary to the purpose and principles of the UN.

According to the paragraph 2 of Article 6 of the Constitution of Georgia: the legislation of Georgia corresponds with universally recognized norms and principles of international law. International treaties or agreements concluded with and by Georgia, if they do not contradict the Constitution of Georgia, take precedence over domestic normative acts.

In accordance with the article 1 of Chapter 26 of the "The Law on Georgian Citizenship", the Georgian citizenship will not be granted to the persons who have committed international crime against peace and humankind.

The granting of asylum to the foreigners is regulated by the law "On legal status of foreigners", where Chapter 6 states that Georgia gives asylum to those foreigners, who are persecuted for protection of human rights and peace, for progressive social-political activity, scientific and other creative activity. Asylum can not be given to foreigners, whose ideas and activity are in contradiction to UN goals and principles and state interests of Georgia. In accordance to sub-point "a" of the article 3 in the Chapter 23, an entry into Georgia of the citizen of foreign state, can be denied in case he/she has committed crimes against peace and humankind.

Sub-paragraph 2 (d)

According to article 326 of the Criminal Code of Georgia, any activity, participation or support of international terrorist organization or activity is punishable by law.

Sub-paragraph 2 (e)

There is no special legislative act in Georgia which concerns fight against terrorism. The provisions concerning the issue are covered in the laws "On State Security Service", "On operational-investigation activity" and the regulations published by the state institutions. It should also be mentioned that the Ministry of State Security has prepared a draft law on "fight against terrorism", which is being further elaborated.

The types of terrorist crimes and responsibility for their commitment are determined by the Criminal Code of Georgia. For instance:

Article 323, defines *terrorist act* as "explosion, firing, use of weapon or other activity, which endangers human life, causes damage to property and/or other results, threatens social security, State's strategic, political and economic interest, committed with the aim to frighten population or exert pressure upon government". Punishment for such crime is 5 to 20 year imprisonment term.

Article 324 - *technological terrorism* – use of nuclear, radiological, chemical or biological weapons or its components, pathogenic micro bodies, radioactive materials detrimental for human health or threat of their using, as well as seizure of nuclear, chemical or strong technological or ecologically dangerous buildings, which threaten social security, State's strategic, political or economic interest, committed with the aim to frighten population and exert pressure on government. Punishable by up to 8 to 20 years of jail.

Threat upon the life, health or property of the President or any other political official of Georgia or a their family members, related to the diplomatic activity of such official, shall be punishable by prison sentence ranging from 7 to 20 years in length or by life imprisonment.

Article 326 - *Assault on person or institution enjoying international protection.* Assault on the representative of a foreign state or the employer of an international organization enjoying international protection or on their office or residential building or vehicle, as well as threatening their life, health or property, including their family members, on political motives or for deterioration of international relations, are punishable by up to 7 to 20 years or life imprisonment.

Article 327. *Formation of, leading or participation in terrorist organization.*

1. Formation or leading of a terrorist organization, shall bear legal consequences of imprisonment from 7 to 15 year jail.

2. Participation in terrorist organization shall be punishable by prison sentences from 5 to 10 years.

Article 328. *Accession to and/or assistance to terrorist organization of foreign state or to such organization controlled by foreign state.* Accession to the terrorist organization of a foreign sate or to such organization controlled by a foreign state or assisting it in terrorist activities shall carry legal consequences of imprisonment from 7 to 15 years.

Article 329. *Seizure of hostage for terrorist purposes.* Hostage taking to coerce state authority or an international or religious organization to carry out or not to carry out a particular action is punishable by law. The article consists of three paragraphs: aggravating circumstances are: actions committed against the political official, person or a member of his/her family, official representative of a foreign state or the person enjoying international legal protection, by a group, repeatedly, by a terrorist organization, if the action claimed a human life or has given rise to a grave consequence. The sentence for the crime is defined according to the aggravating circumstances: prison sentence ranging from 7 to 13 years in length for the paragraph 1, prison sentence ranging from 8 to 15 years in length for the paragraph 2 and prison sentence ranging from 12 to 20 years in length for the paragraph 3.

Art. 330 – *Taking possession of or blocking object of strategic or special importance for terrorist purposes.* The article consists of two paragraphs, aggravating circumstance is if the action claimed a human life or has given rise to a grave consequence. The sentence for the first paragraph is prison sentence ranging from 8 to 15 years in length, and for the second - prison sentence ranging from 12 to 20 years in length or life imprisonment.

Art. 331 – *False notification on terrorism.* This action is punishable by fine or by corrective labor from one to two years in length or by jail time up to three months or by imprisonment not in excess of three years.

The competence of Courts over the crimes committed

Arts. 4 and 6 of the Georgian Criminal Code provide the scope of applicability of the Criminal law towards the persons, namely:

According to the art. 4, the one who has perpetrated a crime on the territory of Georgia shall bear criminal liability as hereunder provided. the code foresees the exceptions for diplomatic representative of a foreign country as well as the person enjoying diplomatic immunity, as their criminal liability is settled in manner and to the extent permitted by the international law;

Under the 1st and 2nd paragraphs of the Art. 5, the citizen of Georgia as well as the stateless person permanently residing in Georgia having committed the action under the Code which is regarded as crime under the legislation of the state in which it was committed, shall bear criminal liability under this Code if they have not been convicted in another state. The citizen of Georgia as well as the stateless person permanently residing in Georgia has committed the action under this Code which is not regarded as crime under the legislation of the state in which it was committed, shall bear criminal liability under this Code if it is a grave or especially grave offence directed against the interests of Georgia or if the criminal liability for this offence is provided by the International Treaty of Georgia.

Under the art. 5(3), the citizen of a foreign state as well as the person not permanently residing in Georgia without citizenship who commit the act covered under this Code shall bear criminal liability under this Code if it is a grave or especially grave offence directed against the interests of Georgia or if the criminal liability for this offence is provided by the international treaties signed by Georgia if they have not been convicted in another state.

According to the art. 6, the citizen of Georgia as well as the stateless person permanently residing in Georgia shall in no way be extradited to the other state for criminal prosecution or for serving a sentence unless otherwise determined by the international treaties signed by Georgia. The citizen of a foreign state as well as the stateless person on the territory of Georgia, who has committed a crime may be extradited to another state for criminal prosecution or for serving a sentence in a manner and to the extent determined by the International Treaty of Georgia. It shall be inadmissible to extradite a person under asylum who has committed a crime and who is being persecuted for political creed or the person who has committed the action not regarded as crime under the legislation of Georgia or for this crime capital punishment is prescribed in the state seeking extradition. The question of criminal liability of such persons shall be settled in manner and to the extent determined by the International Treaty of Georgia.

Under art. 6 of the constitution of Georgia, the Constitution is the supreme law of Georgia. All other legal acts should be in conformity with the Constitution or the Constitutional Agreement. According to the art. 6(2), International Treaty of Georgia prevails to the national normative acts, provided it does not contradict with the Constitution or the Constitutional Agreement of Georgia.

The timeframes of the assistance in criminal matters are determined under the International Treaties and Agreements of Georgia. As a rule, Georgia acts on the request on extradition in possibly limited time.

Sub-paragraph 2 (f)

According to the Article 27 of the Vienna Convention on the Law of Treaties: A party may not invoke the provisions of its internal law as justification for its failure to perform a treaty.

According to Article 6 of the Constitution of Georgia:

1. The Constitution is the supreme law of the state. All other legal acts shall be issued in accordance with the Constitution.

2. The legislation of Georgia corresponds with universally recognized norms and principles of international law. International treaties or agreements concluded with and by Georgia, if they do not contradict the Constitution of Georgia, take precedence over domestic normative acts.

According to Article 6, paragraph 1 of the Law of Georgia on International Treaties of Georgia: international treaty, to which Georgia is a party, is integral part of the Georgian legislation.

The international treaties, to which Georgia is a party, do not contradict the Constitution of Georgia. According to the Law of Georgia on International Treaties of Georgia before treaty enters into force with regard to Georgia, compatibility of domestic legislation with international treaty and its possible legal affects must be exercised and studied by the Ministry of Justice and in case of incompatibility amendments are to be prepared by the competent Ministry.

In this way relevant international conventions for the suppression of terrorism, to which Georgia is a party, are in harmony with the Georgian Constitution. It means that it is impossible to invoke the Constitution of Georgia to override the legal provisions, those being in harmony with the constitution. It is within a spirit of the Georgian Constitution to fulfil obligations undertaken in accordance with the constitution before international community and international organizations.

On 30 April 2002 Georgia signed the Agreement among the Republic of Turkey, Georgia and the Republic of Azerbaijan on combating Terrorism, organized Crime, illicit Trafficking in Narcotic Drugs and Psychotropic

Substances, money Laundering, Trafficking in Human Beings and Arms smuggling and other major crimes. The Agreement requires ratification for entering into force. The agreement envisages assistance on criminal matters among parties on a whole range of terrorism crimes.

Georgia is fully conscious that combating terrorism by the national authorities only on the territory of Georgia could not be efficient enough, due to the trans-frontier character of the crime of terrorism. Therefore Georgia strives to be part of a world coalition against this one of the most dangerous crime of the 21st century.

Sub-paragraph 3 (a)

Subdivisions of Special Service of Georgian State Protection/Guard work on discovering and neutralizing active terrorist groups, as well as reveal their alliance with international terrorist structures and relation with weapons of mass destruction.

With regard of abovementioned issue, the Special Service of Georgian State Protection/Guard cooperates with other authorities and periodically exchanges operative information. For this reason there is a special position for communications officer by which the information is exchanged unalterably. By means of friendly countries, interagency computer network has been established which allows Interpol and Ministry of Internal Affairs to exchange information.

Sub-paragraph 3 (c)

The reasons for refusal of the request on extradition are determined by the agreements with different states. As for the political ground of refusal, it should be stated that under the legislation of Georgia, it is inadmissible to extradite a person persecuted for political beliefs, but not for a grave crime, especially for terrorist act. Accordingly, political motivation can not be considered to be the ground of refusal of the request on extradition.

Decision on establishment of Anti-Terrorist Centre of member states of the Commonwealth of Independent States was made on 1 December, 2000. The Centre is a body with coordinating functions on combating terrorism. The document will enter into force only after the completion of internal domestic procedures. The document has been submitted to the Parliament of Georgia for ratification. The Parliament is currently work on it.

On 20 July 2002 Georgia signed the Agreement on Cooperation among the Governments of GUUAM (Georgia, Ukraine, Uzbekistan, Azerbaijan and Moldova) participating states in the field of Combat against Terrorism, Organized Crime and other Dangerous Types of Crimes. The internal domestic procedures for the ratification of the Agreement are underway.

Georgia ratified European Convention on Suppression of Terrorism.

Georgia is party to the Agreement among the Governments of the BSEC (Black Sea Economic Cooperation) Participating States on Cooperation in Combating Crime, in Particular in its Organized Forms and its additional Protocol.

Subparagraph 3 (d)

Georgia is carrying out internal legislative procedures with regard to the International Convention for the Suppression of Terrorist Bombings (1998);

Georgia is carrying out internal legislative procedures with regard to the treaty on cooperation of member states of the Commonwealth of Independent States on combating terrorism;

Georgia is carrying out internal legislative procedures with regard to the Convention on the Prevention and Punishment of Crimes Against Internationally Protected Persons, Including Diplomatic Agents (1973);

Georgia is carrying out internal legislative procedures with regard to the Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation (1988);

Georgia is carrying out internal legislative procedures with regard to the International Convention against the Taking of Hostages (1979);

Georgia is carrying out internal legislative procedures with regard to the Convention on the physical protection of nuclear material (1980).

The Parliament of Georgia has no yet ratified number of International Treaties and Conventions on combating terrorism. However, we are able to inform you about the normative acts enabling the implementation of these international instruments.

Resulting from the fact that the Parliament of Georgia has no yet ratified the abovementioned International Treaties and Conventions, the crimes included therein are not considered to be subject to extradition, provided by the bilateral and multilateral international agreements of Georgia.

Sub-paragraph 3 (e)

The bilateral treaties to which Georgia is party do not exclude extradition of persons on crimes relating to terrorism.

Sub-paragraph 3 (g)

Georgia has ratified European Convention on Extradition according to which:

(Article 3 – Political Offences) The taking or attempted taking of the life of a Head of State or a member of his family shall not be deemed a political offence for the purposes of this Convention.

Georgia has ratified Additional Protocol to the European Convention on Extradition according to which:

(Article 1) For the application of Article 3 of the Convention, political offences shall not be considered to include the following:

a. The crimes against humanity specified in the Convention on the Prevention and Punishment of the Crime of Genocide adopted on 9 December 1948 by the General Assembly of the United Nations;

Paragraph 4

Georgia closely cooperates on international level with bodies specialized in chemical and nuclear issues. Georgia regularly informs the International Atomic Energy Organization on issues raised in paragraph 4 of the Resolution.